



**South Carolina Department of Health
and Environmental Control**

Division of Procurement Services

Request For Proposal

**Solicitation No.: RFP.36602-11/17/09-MAR
(Re-Bid)**

Date Issued: October 21, 2009

Procurement Officer: Michelle Robinson

Phone No.: 803-898-3469

E-mail Address: robinsma@dhec.sc.gov

Page No.: 1 of 38

DESCRIPTION: Provide Pharmacy Services for DHEC's Hemophilia Assistance Program.

USING GOVERNMENTAL UNIT: **South Carolina Department of Health and Environmental Control**

The Term "Offer" Means Your "Bid" or "Proposal". Your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS:

SC DHEC – Division of Procurement Services
Bureau of Business Management
2600 Bull Street
Columbia, S.C. 29201

PHYSICAL ADDRESS:

SC DHEC – Division of Procurement Services
Bureau of Business Management
2600 Bull Street, Room 1200 – Aycock Bldg.
Columbia, S.C. 29201

SUBMIT OFFER BY November 17, 2009 at 2:30 PM

(See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: November 5, 2009 at 5:00 PM

(See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **One (1) original and three (3) copies marked as "Copy"**

CONFERENCE TYPE: **N/A**

DATE & TIME:

LOCATION: **N/A**

(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)

**AWARD &
AMENDMENTS**

Award will be posted on **Dec. 11, 2009**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <http://www.scdhec.gov/procurement>

You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of ninety (90) calendar days after the Opening Date.

(See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR

(full legal name of business submitting the offer)

Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

AUTHORIZED SIGNATURE

(Person must be authorized to submit binding offer to contract on behalf of Offeror.)

TAXPAYER IDENTIFICATION NO.

(See "Taxpayer Identification Number" provision)

TITLE

(business title of person signing above)

STATE VENDOR NO.

(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)

PRINTED NAME

(printed name of person signing above)

DATE SIGNED

STATE OF INCORPORATION

(If you are a corporation, identify the state of incorporation.)

OFFEROR'S TYPE OF ENTITY: (Check one)

(See "Signing Your Offer" provision.)

☐ Sole Proprietorship

☐ Partnership

☐ Other _____

☐ Corporate entity (not tax-exempt)

☐ Corporation (tax-exempt)

☐ Government entity (federal, state, or local)

PAGE TWO

(Return Page Two with Your Offer)

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	_____ Area Code - Number - Extension Facsimile
	_____ E-mail Address

PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause)	ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
_____ Payment Address same as Home Office Address _____ Payment Address same as Notice Address (check only one)	_____ Order Address same as Home Office Address _____ Order Address same as Notice Address (check only one)

ACKNOWLEDGMENT OF AMENDMENTS Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
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PREFERENCES - SC RESIDENT VENDOR PREFERENCE (June 2005): Section 11-35-1524 provides a preference for offerors that qualify as a resident vendor. A resident vendor is an offeror that (a) is authorized to transact business within South Carolina, (b) maintains an office* in South Carolina, (c) either (1) maintains a minimum \$10,000.00 representative inventory at the time of the solicitation, or (2) is a manufacturer which is headquartered and has at least a ten million dollar payroll in South Carolina, and the product is made or processed from raw materials into a finished end-product by such manufacturer or an affiliate (as defined in Section 1563 of the Internal Revenue Code) of such manufacturer, and (d) has paid all assessed taxes. If applicable, preference will be applied as required by law.	OFFERORS REQUESTING THIS PREFERENCE MUST INITIAL HERE. _____ *ADDRESS AND PHONE OF IN-STATE OFFICE _____ In-State Office Address same as Home Office Address _____ In-State Office Address same as Notice Address <div align="right">(check only one)</div>
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PREFERENCES - SC/US END-PRODUCT (June 2005): Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the item identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms made, manufactured, and grown are defined by Section 11-35-1524(B). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, offeror certifies that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law.	IF THIS PREFERENCE APPLIES TO THIS PROCUREMENT, PART VII (BIDDING SCHEDULE) WILL INCLUDE A PLACE TO CLAIM THE PREFERENCE. OFFERORS REQUESTING THIS PREFERENCE MUST CHECK THE APPROPRIATE SPACES ON THE BIDDING SCHEDULE.
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I. SCOPE OF SOLICITATION

It is the intent of the State of South Carolina, South Carolina Department of Health and Environmental Control (DHEC) to solicit offers to provide pharmacy services for the South Carolina Department of Health and Environmental Control's (DHEC) Hemophilia Assistance Program.

ACQUIRE SERVICES & SUPPLIES / EQUIPMENT (JAN 2006)

The purpose of this solicitation is to acquire services and supplies or equipment complying with the enclosed description and/or specifications and conditions.

MAXIMUM CONTRACT PERIOD – ESTIMATED: (JAN 2006)

Start Date: January 1, 2010

End Date: December 13, 2014

Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Terms of Contract – Effective Date / Initial Contract Period". This is a one year contract with **Four** (4) mutual one-year options to renew.

II. INSTRUCTIONS TO OFFERORS – A. GENERAL INSTRUCTIONS

DEFINITIONS (JANUARY 2006) EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.

AMENDMENT – means a document issued to supplement the original solicitation document.

BOARD – means the South Carolina Budget & Control Board.

BUYER – means the Procurement Officer.

CHANGE ORDER - means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT - See clause entitled "Contract Documents & Order of Precedence."

CONTRACT MODIFICATION – means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

CONTRACTOR - means the Offeror receiving an award as a result of this solicitation.

COVER PAGE – means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

OFFER – means the bid or proposal submitted in response this solicitation. The terms "Bid" and "Proposal" are used interchangeably with the term "Offer."

OFFEROR – means the single legal entity submitting the offer. The term "Bidder" is used interchangeably with the term "Offeror." See bidding provisions entitled "Signing Your Offer" and "Bid/Proposal As Offer To Contract."

ORDERING ENTITY - Using Governmental Unit that has submitted a Purchase Order.

PAGE TWO – means the second page of the original solicitation, which is labeled Page Two.

PROCUREMENT OFFICER – means the person, or his successor, identified as such on the Cover Page.

YOU and YOUR – means Offeror.

SOLICITATION – means this document, including all its parts, attachments, and any Amendments.

STATE – means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR – means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

USING GOVERNMENTAL UNIT – means the unit of government identified as such on the Cover Page.

WORK - means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

AMENDMENTS TO SOLICITATION (DHEC – FEB 2007)

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: <http://www.scdhec.gov/procurement/>

- (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment.
- (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

AWARD NOTIFICATION (NOV 2007)

Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. Should the contract resulting from this Solicitation have a potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given.

BID / PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed.

BID ACCEPTANCE PERIOD (JAN 2004)

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing.

BID IN ENGLISH & DOLLARS (JAN 2004)

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

BOARD AS PROCUREMENT AGENT (DHEC FEBRUARY 2007)

(a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement.

(b) Purchasing Liability. The Procurement Officer is an employee of the South Carolina Department of Health and Environment Control (SCDHEC) acting on behalf of SCDHEC pursuant to the Consolidated Procurement Code.

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)

GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.

(a) By submitting an offer, the offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)

(a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

CODE OF LAWS AVAILABLE (JAN 2006)

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at: <http://www.scstatehouse.net/code/statmast.htm>. The South Carolina Regulations are available at: <http://www.scstatehouse.net/coderegs/statmast.htm>.

COMPLETION OF FORMS / CORRECTION OF ERRORS (JAN 2006)

All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.)

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies' mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)]

DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)

By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

DUTY TO INQUIRE (JAN 2006)

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention.

ETHICS CERTIFICATE (May 2008)

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.

OMIT TAXES FROM PRICE (JAN 2004)

Do not include any sales or use taxes in your price that the State may be required to pay.

PROTESTS (JUNE 2006)

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals,

multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004)

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, ***you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials.*** All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, ***you agree not to give anything to any Using Governmental Unit.***

SIGNING YOUR OFFER (JAN 2004)

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words "by its Partner," and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

STATE OFFICE CLOSINGS (JAN 2004)

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: http://www.scemd.org/scgovweb/weather_alert.htm.

SUBMITTING CONFIDENTIAL INFORMATION (AUGUST 2002)

(An overview is available at www.procurement.sc.gov) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word

"PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire

page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.)

SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004)

(a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) – (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498.

TAXPAYER IDENTIFICATION NUMBER (JAN 2004)

(a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.

(b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by

the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether

- (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- (ii) Offeror is an agency or instrumentality of a state or local government;
- (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

VENDOR REGISTRATION MANDATORY (JAN 2006)

You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select "New Vendor Registration." (To determine if your business is already registered, go to "Vendor Search".) Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting "Change Vendor Registration." (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>.)

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)

Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

II. INSTRUCTIONS TO OFFERORS – B. SPECIAL INSTRUCTIONS

CLARIFICATION (NOV 2007)

Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarifications of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445-2080]

CONTENTS OF OFFER (RFP) – SPO (JAN 2006)

- (a) Offers should be complete and carefully worded and should convey all of the information requested.
- (b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
- (c) Each copy of your offer should be bound in a single volume where practical. All documentation submitted with your offer should be bound in that single volume.
- (d) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

DISCUSSIONS & NEGOTIATIONS (NOV 2007)

Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are

submitted, the State may elect to consider only your unrevised initial proposal. [11-35-1530(6); R.19-445.2095(I)] The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)/BUSINESS ASSOCIATE AGREEMENT (DHEC APR 2009)

Prior to any work being done on any contract resulting from this solicitation, the Contractor will be required to sign a Business Associate Agreement to safeguard the privacy and security of Protected Health Information (PHI) and Electronic Protected Health Information (EPHI) pursuant to requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). A copy of the Business Associate Agreement is included in the Appendix (ATTACHMENT E) of this solicitation. Upon submission of an offer, the offeror agrees to these items.

ILLEGAL IMMIGRATION (NOV 2008): (An overview is available at www.procurement.sc.gov)

By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

MAIL PICKUP (DHEC – APR 2009)

The South Carolina Department of Health and Environmental Control picks up all mail from The US Postal Service twice daily around 8:30 a.m. ET and 12:00 p.m. ET (excluding weekends and holidays). See provision entitled Deadline for Submission of Offer.

OPENING PROPOSALS – PRICES NOT DIVULGED (JAN 2006)

In competitive sealed proposals, prices will not be divulged at opening. [§ 11-35-1530 & R. 19-445.2095(c) (1)]

PROTEST – CPO - MMO ADDRESS (JUNE 2006)

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to protest-mm@mmo.state.sc.us, (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

III. SCOPE OF WORK/SPECIFICATIONS

PURPOSE AND INTRODUCTION

The South Carolina Department of Health and Environmental Control's (DHEC) Office of Children with Special Health Care Needs is seeking the services of qualified contractors to provide pharmacy services for DHEC's Hemophilia Assistance Program.

BACKGROUND

The SC DHEC Hemophilia Assistance Program (HAP) utilizes state funding to provide blood-clotting factors and related supplies to eligible clients for home-based infusion. Clotting factors are not provided for inhibitor therapy (immune tolerance induction).

An individual, regardless of age, is eligible for the Program if:

- A. the individual has a diagnosis of a blood clotting factor disorder;**
- B. the individual's family income is at or below 250% of Federal Poverty guidelines as distributed annually by the Program;**
- C. the individual is a resident of South Carolina;**
- D. the individual is a citizen of the United States or an alien lawfully admitted to the United States (known to U.S. Bureau of Citizenship and Immigration Services (BCIS);**
- E. the individual is not an inmate of a public institution such as a prison, county jail, or state mental institution.**

Applications for the HAP are completed through the local health department. Verification of income, residency and citizenship is required. Annual verification of income and residency is required for continued program eligibility.

Anti-hemophilic blood products are purchased by the HAP from vendors who have participated in a competitive bid process. This allows the HAP to purchase blood products at the lowest available cost. HAP client prescriptions for anti-hemophilia blood product are processed by a SC licensed pharmacist and shipped directly to the client's home. An adult signature is required for shipment receipt. DHEC bills any available third party resource for the cost of the blood-products and related supplies provided to HAP clients.

CONTRACTOR'S RESPONSIBILITIES

The Contractor shall:

1. Provide SC licensed pharmacist to fill or refill prescriptions for anti-hemophilic blood product orders each Tuesday and Thursday for a maximum of forty (40) orders per month. Contractor is responsible for appropriately packaging blood product orders for delivery within 48 hours to hemophilia assistance program clients. Urgent order situations will be discussed and handled as agreed to by both parties. If a Tuesday or Thursday is a holiday, both parties will work together to adjust the process to accommodate a holiday schedule.
2. Inspect anti-hemophilic blood product upon arrival to the pharmacy and report immediately to DHEC if product appears to be damaged or compromised in any way.
3. Not be responsible for damaged anti-hemophilic blood product(s) due to unforeseen circumstances.
4. Not replace or pay for the cost of any anti-hemophilic blood product.
5. Assure that a SC licensed pharmacist will oversee contractual services and serves as point of contact for DHEC and provide DHEC contact information for assigned pharmacist(s) and for alternate pharmacist contact.
6. Have on-site space available for refrigeration of anti-hemophilic blood products prior to shipment; storage of necessary supplies.

DHEC RESPONSIBILITIES

DHEC shall:

1. Order the anti-hemophilic blood products for shipment to Contractor's address. Notification will be provided for all shipments to the Contractor.
2. Arrange for scheduled pick-up of filled prescriptions at the Contractor's location for 2:00 to 3:00 p.m.

3. Tuesdays and Thursdays and as needed for emergency orders.
Provide Contractor with anti-hemophilic blood product, related infusion supplies, and shipping materials.
4. Assure that prescriptions, patient demographics and medical provider information are readily accessible to Contractor.
5. Verify and enter all ship to addresses for hemophilia assistance program clients.

BUSINESS ASSOCIATE AGREEMENT

The successful offerors must sign DHEC Form 0854, Business Associate Agreement between South Carolina Department of Health and Environmental Control and Contractor (See Attachment E attached to this document). Offerors who take exception to the above referenced agreement will not be considered eligible for award.

DELIVERY / PERFORMANCE LOCATION – PURCHASE ORDER (JAN 2006)

After award, all deliveries shall be made and all services provided to the location specified by the Using Governmental Unit in its purchase order.

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT - EVALUATION (JAN 2006)

In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation:

To be considered for award, all bids must include, as a minimum, the following information. The bid must contain all required information listed below. Offerors should restate each of the items listed below and provide their bid immediately thereafter. **All information should be presented in the listed order:**

The bidder is to submit ONE ORIGINAL AND THREE (3) copies including, but not limited, to the following information for consideration and evaluation.

A. Experience, Capability of Organization, Qualifications of Key Personnel

1. Provide details on the experience and capability of the organization, including the size of the organization, the number of years in business and the ability to provide the services requested. Include the qualifications of the key personnel who would be involved in this project and their responsibilities.
2. Offeror should include at least one (1) business reference for similar projects performed within the last two years. References should be for project of similar size and scope. The State reserves the right to call and/or visit references provided. The reference information should include:
Name of the reference, including complete mailing address.
The name of a contact that is knowledgeable of the services provided.
Telephone number and E-mail address.

B. Proposed Approach

1. The Offeror shall provide a detailed, clear, and concise explanation of how they plan to fulfill the services as identified under Section III. SCOPE OF WORK/SPECIFICATIONS – CONTRACTOR'S RESPONSIBILITIES.

C. Monthly Cost (All inclusive): Cost is based on a monthly charge.

NOTE: ALL COSTS MUST BE SUBMITTED IN A SEPARATE, SEALED ENVELOPE.

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JAN 2006)

Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations.

NOTE: Please include the following:

Letter of Introduction and Purpose:

Offerors must provide a one-page letter that clearly answers the following:

- a). Be signed by a company officer empowered to bind the Offeror to the provisions of this RFP and any contract award pursuant to it; if said individual is not the company president, the letter shall have attached evidence showing authority to bind the company.
- b). Provide the complete name and Social Security Number of the individual or the legal entity name and Federal Employer Identification Number of the firm making the proposal.
- c). Provide a contact and appropriate contact information, such as: name, mailing address, telephone and fax numbers, and e-mail addresses.
- d). State that the Offeror understands and agrees to complete the Scope of Services.
- e). State whether the Offeror intends to use subcontractors. If so, clearly identify the names of the subcontractors along with complete mailing address and the scope of portions of the work the subcontractors shall perform. (The Successful Offeror must obtain written approval from the State prior to use of any subcontractors).

MINORITY PARTICIPATION (JAN 2006)

Is the bidder a South Carolina Certified Minority Business? ☐ Yes ☐ NO

Is the bidder a Minority Business certified by another governmental entity? ☐ Yes ☐ NO

If so, please list the certifying governmental entity: _____

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? ☐ Yes ☐ NO

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? ☐ Yes ☐ NO

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? ☐ Yes ☐ NO

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? ☐ Yes ☐ NO

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- ☐ Traditional minority
- ☐ Traditional minority, but female
- ☐ Women (Caucasian females)
- ☐ Hispanic minorities
- ☐ DOT referral (Traditional minority)
- ☐ DOT referral (Caucasian female)
- ☐ Temporary certification
- ☐ SBA 8 (a) certification referral
- ☐ Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL: <http://www.govoepp.state.sc.us/osmba/>

V. QUALIFICATIONS

QUALIFICATION OF OFFEROR (JAN 2006)

To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

QUALIFICATIONS - MANDATORY MINIMUM (JAN 2006)

(a) In order to be qualified to receive award, you must meet the following mandatory minimum qualifications:

- i. Must hold a valid SC Pharmacy Permit
- ii. Must be a licensed pharmacist in the State of South Carolina with experience in handling and knowledge of anti-hemophilic blood products
- iii. Must be located within a ten-mile radius of 1851 Calhoun St., Columbia SC to allow for efficient program supply delivery
- iv. Must have secure E-mail and fax capabilities in pharmacy

(b) The Procurement Officer may, in his discretion, consider (1) the experience of a predecessor firm or of a firm's key personnel which was obtained prior to the date offeror was established, and/or (2) any subcontractor proposed by offeror.

(c) Provide a detailed, narrative statement providing adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation.

SUBCONTRACTOR – IDENTIFICATION (JAN 2006)

If you intend to subcontract with another business for any portion of the work and that portion exceeds 10% of your price, your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business' name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may evaluate your proposed subcontractors.

VI. AWARD CRITERIA

AWARD CRITERIA – PROPOSALS (JAN 2006)

Award will be made to the highest ranked, lowest responsible and responsive Offeror whose offer is determined to be the most advantageous to the State.

AWARD TO ONE OFFEROR (JAN 2006)

Award will be made to one Offeror.

EVALUATION FACTORS – PROPOSALS (JAN 2006)

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offers will be ranked from most advantageous to least advantageous

Experience, Capability of Organization, Qualifications of Key Personnel (See information to submit – Evaluation, Page 16)	50%
Proposed Approach (See information to submit – Evaluation, Page 16)	30%
Cost (See information to submit – Evaluation, Page 16)	20%

The State will be the sole judge as to whether an offeror's bid has or has not satisfactory met the requirements of
SOLICITATION NO.: RFP.36602-11/17/09-MAR (RE-BID).

VII. TERMS AND CONDITIONS – A. GENERAL

ASSIGNMENT (JAN 2006)

No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.

BANKRUPTCY (JAN 2006)

(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

CHOICE-OF-LAW (JAN 2006)

The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (JAN 2006)

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

DISCOUNT FOR PROMPT PAYMENT (JAN 2006)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

DISPUTES (JAN 2006)

(1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement

is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

EQUAL OPPORTUNITY (JAN 2006)

Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

FALSE CLAIMS (JAN 2006)

According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

FIXED PRICING REQUIRED (JAN 2006)

Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

NON-INDEMNIFICATION (JAN 2006)

Any term or condition is void to the extent it requires the State to indemnify anyone.

NOTICE (JAN 2006)

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

PAYMENT (JAN 2006)

(a) The Using Governmental Unit shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless the purchase order specifies another method of payment, payment will be made by check. (c) Payment and interest shall be made in accordance with S.C. Code Section 11-35-45. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable.

Method of Payment:

The Contractor shall submit invoices for payment of services rendered as outlined in the Scope of Services, as follows:

1. The invoice must include the name and address of the Contractor, the Contract Number, a brief description of the Scope of Services, the period covered, an itemized listing of expenses incurred with categorical break-out as required by the DHEC program, the total amount of the reimbursement, and supporting documentation for expenditures as required by DHEC.

2. Reimbursement will be for actual allowable costs incurred. Only expenditures incurred during the contract period can be submitted for reimbursement. The invoice should be received by DHEC within fifteen (15) days after the end of each month. The final invoice should be received by DHEC within thirty (30) days after the end of the contract. Mail requests for payment to S.C. Department of Health and Environmental Control, Health Services Operations - Contract Section, Box 101106, Columbia, S.C., 29211.

PREVENTING AND REPORTING FRAUD, WASTE AND ABUSE (DHEC 2008)

- a. Federal and state laws make it unlawful to submit false claims to the government for payment; provide for civil, criminal and administrative penalties; and protect individuals, including government employees, who make good faith reports of suspected violations.
- b. SCDHEC has established procedures and policies concerning the prevention and reporting of fraud, waste and abuse (FWA) in agency-funded programs, including but not limited to those funded by federal grants such as Medicaid. No agency employee, agent, or contractor shall direct, participate in, approve, or tolerate any violation of federal or state laws regarding FWA in government programs. Any employee, agent, or contractor of SCDHEC who submits a false claim in violation of federal or state laws will be reported to appropriate authorities.
- c. The federal False Claims Act provides civil penalties for submitting false claims or statements to a federally funded program and authorizes the U. S. Attorney General to enforce this law. Citizens may bring an action on behalf of the government within six years of submittal of the false claim, and may receive part of any damages. An individual who in good faith reports information about false claims submitted by others is protected by law from retaliation for making the report ("whistleblower" protection.) Federal law also allows certain agencies, including the Department of Health and Human Services, to hold administrative hearings to penalize persons for false or fraudulent claims.
- d. Under State law, persons may be criminally prosecuted for false claims made to an insurer, HMO or any person, including state government, providing benefits for health care. Medicaid fraud statutes allow criminal prosecution of health care providers and Medicaid applicants or recipients who knowingly make false statements to the Medicaid Program, or conceal or fail to disclose material facts affecting entitlement to Medicaid reimbursement, payment, or benefits. Health care providers may also be liable for civil and administrative penalties and sanctions for Medicaid fraud. The State Attorney General has authority to prosecute persons for insurance fraud who make false statements and misrepresentations in order to obtain an undeserved economic benefit or to deny someone a benefit in connection with any insurance transaction. The State Computer Crimes Act authorizes criminal penalties for persons who use a computer to devise or execute any fraud scheme or to obtain money or services by false representations.
- e. Anyone who becomes aware of the existence or apparent existence of FWA in agency funded programs is encouraged to report such matters by writing to the Office of Internal Audits, SCDHEC, 2600 Bull Street, Columbia, South Carolina 29201; or by calling the Agency Fraud, Waste and Abuse Hotline at 803-0896-0650 or toll-free at 1-866-206-5202. Reports will be handled confidentially.
- f. The Contractor is required to inform contractor's employees of the existence of SCDHEC's policy prohibiting FWA and the procedures for reporting FWA to the agency.

PUBLICITY (JAN 2006)

Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

PURCHASE ORDERS (JAN 2006)

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

SETOFF (JAN 2006)

The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state

department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

SURVIVAL OF OBLIGATIONS (JAN 2006)

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

TAXES (JAN 2006)

Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

THIRD PARTY BENEFICIARY (JAN 2006)

This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

WAIVER (JAN 2006)

The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing.

VII. TERMS AND CONDITIONS – B. SPECIAL

CHANGES (JAN 2006)

(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services.

Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

COMPLIANCE WITH LAWS (JAN 2006)

During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

CONTRACTOR PERSONNEL (JAN 2006)

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

CONTRACTOR'S OBLIGATION – GENERAL (JAN 2006)

The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006)

Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the work.

DEFAULT (JAN 2006)

(a)(1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

ESTIMATED QUANTITY – UNKNOWN (JAN 2006)

The total quantity of purchases of any individual item on the contract is not known. The States does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information.

INDEMNIFICATION - THIRD PARTY CLAIMS (JAN 2006)

Notwithstanding any limitation in this agreement, Contractor shall defend and indemnify the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arise out of, or result in any way from, any defect in the goods or services acquired hereunder or from any act or omission of Contractor, its subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. State shall allow Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. State shall allow Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any

deferred settlement payments are the sole liability of) Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of Contractor. State shall reasonably cooperate with Contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement.

LICENSES AND PERMITS (JAN 2006)

During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

OWNERSHIP OF DATA & MATERIALS (JAN 2006)

All data, material and documentation either prepared for the state pursuant to this contract shall belong exclusively to the State.

PRICE ADJUSTMENTS (JAN 2006)

(1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the Contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or,

(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

PRICE ADJUSTMENT - LIMITED - AFTER INITIAL TERM ONLY (JAN 2006)

Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase.

PRICE ADJUSTMENTS – LIMITED BY CPI “All Items” (JAN 2006)

Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “all items” for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov.

PRICING DATA – AUDIT – INSPECTION (JAN 2006)

[Clause Included Pursuant to § 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. § 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a

change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions – Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. § 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR § 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

RELATIONSHIP OF THE PARTIES (JAN 2006)

Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

STORAGE OF MATERIALS (JAN 2006)

Absent approval of the using governmental unit, Contractor shall not store items on the premises of the using governmental unit prior to the time set for installation.

TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is one year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

TERM OF CONTRACT – OPTION TO RENEW (JAN 2006)

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of one year, unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award.

TERM OF CONTRACT – TERMINATION BY CONTRACTOR (JAN 2006)

Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least ninety (90) days prior to the expiration of the then current term.

TERMINATION FOR CONVENIENCE – INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006)

Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination.

TERMINATION FOR CONVENIENCE (JAN 2006)

(1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for supplies or services accepted under the contract;

(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;

(iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or

(ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause.

TERMS AND CONDITIONS (DHEC)

1. Records with respect to all matters covered by this Contract shall be retained by the Contractor for 6 years after the end of the Contract period, and shall be available for audit and inspection at any time such audit is deemed necessary by DHEC. If audit has begun but is not completed at the end of the 6-year period, or if audit findings have not been resolved at the end of the 6-year period, the records shall be retained until resolution of the audit findings.
2. By signing this Contract, the Contractor certifies that he/she is not now nor has been within the last two years an employee of a South Carolina State Agency.
3. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this contract on the grounds of race, age, health status, handicap, color, sex, religion or national origin. This includes the provision of language assistance services to individuals of limited English proficiency eligible for services provided by DHEC.

4. No travel expenses will be paid under this agreement.
5. Confidentiality:
 - a. The Contractor agrees to abide by DHEC's Confidentiality Policy, which states that all information about personal facts and circumstances of DHEC employees, clients, or members of the public is confidential and will not be disclosed without written authorization of the individual to which it pertains unless disclosure is required by law, or otherwise required in accordance with this agreement and released to the Contractor after DHEC Office of General Counsel review. If confidential information is disclosed pursuant to a properly completed authorization, documentation of the disclosure and a copy of the authorization must be maintained and made available for DHEC inspection and audit. In addition, confidential agency information and action shall not be disclosed unless DHEC authorizes the disclosure in writing, or the disclosure is required by law.
 - b. The types of information that generally must be kept confidential include, but are not limited to, personal information about job applicants, DHEC employees, DHEC clients or members of the public, such as names, social security numbers, addresses, telephone numbers, medical or disability information, financial status and information, account or identification numbers issued by government agencies or private financial institutions, other identifying information, or confidential business information.
 - c. The Family Privacy Protection Act may place additional restrictions on the collection and disclosure of personal information. Information that is otherwise available to the public under the Freedom of Information Act may be released in accordance with State law.
 - d. Protected Health Information about DHEC clients generally cannot be disclosed without proper authorization by the client or his/her parent or legal guardian, or pursuant to a specific exception under the Health Insurance Portability and Accountability Act (45 CFR Parts 160 and 164).
 - e. The Contractor and the Contractor's employees/agents may be required to sign DHEC's Confidentiality Agreement (DHEC Form #0321), a copy of which is attached hereto. Alternatively, if the Contractor desires to rely upon an existing Confidentiality Agreement signed by its employees/agents, a copy of the Confidentiality Agreement must first be provided to the DHEC Contract Officer for evaluation, and the Contracting Party must provide written verification that all employees/agents who may have access to DHEC confidential information in the course of performing this agreement have executed the Confidentiality Agreement. The Contractor must ensure that confidential information released to the Contractor's employees/agents is limited to the information minimally necessary in order to meet its obligations under this agreement.
 - f. Unauthorized disclosure of confidential information may result in termination of this agreement and may be grounds for fines, penalties, imprisonment, injunctive action, civil suit, or debarment from doing business with the State. The Contractor must immediately notify the Region Health Director and DHEC HIPAA Privacy Officer of any unauthorized disclosure of a DHEC client's protected health information which occurs in the course of performing this agreement. Unauthorized disclosure of other types of confidential information not consisting of protected health information must be immediately reported to the DHEC Contract Officer, 2600 Bull Street, Columbia, S.C. 29201.
6. Any funds paid by DHEC and not used for completion of services in accordance with this contract shall be returned to DHEC.
7. Prior to participating in any DHEC clinical activity or rendering any service to DHEC under this Agreement, the Contracting Party and employees/agents of the Contracting Party will be educated and trained regarding the Health Insurance Portability and Accountability Act of 1996 and related Regulations pertaining to the privacy and security of protected health information (the HIPAA Privacy Rule). The Contracting Party will provide documentation of successful completion of this training to the Contract Officer prior to initiating performance of this Agreement. If this training has not been conducted, or documentation of training has not been provided, the Contracting Party

and its employees/agents will be required to view DHEC's HIPAA training video(s) and receive necessary instruction on the DHEC forms referenced in the training prior to initiating performance of this Agreement.

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

PRICE PROPOSAL (JAN 2006)

Notwithstanding any other instructions herein, you shall submit the following price information as a separate document:

Total price per month to provide Pharmacy Services for the Hemophilia Assistance Program

NOTE: Price proposal shall be submitted as a separate, sealed, envelope.

The cost bid must be an all-inclusive cost for all requirements as specified in this solicitation document. If there are additional charges to support any of the specifications/technical requirements listed, these charges must be itemized under "Other Charges".

See **SECTION IV – INFORMATION FOR OFFEROR'S TO SUBMIT – EVALUATION (JAN 2006)**

IX. Attachments to Solicitation

- A. Nonresident Taxpayer Registration Affidavit Income Tax Withholding
- B. Income Tax Credit
- C. Offeror's Checklist
- D. Confidentiality Agreement
- E. Business Associate Agreement

NONRESIDENT TAXPAPER REGISTRATION ADIDAVIT INCOME TAX WITHHOLDING

IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at www.sctax.org.

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.

<http://www.sctax.org/Form-and+Instructions/withholding/default.htm>



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**NONRESIDENT TAXPAYER
REGISTRATION AFFIDAVIT
INCOME TAX WITHHOLDING**

I-312
(Rev. 6/26/01)
3323

The undersigned nonresident taxpayer on oath, being first duly sworn, hereby certifies as follows:

1. Name of Nonresident Taxpayer: _____

2. Trade Name, if applicable (Doing Business As):

3. Mailing Address: _____

4. Federal Identification Number: _____

5. _____ Hiring or Contracting with:
Name: _____

Address: _____

_____ Receiving Rentals or Royalties From:
Name: _____

Address: _____

_____ Beneficiary of Trusts and Estates:
Name: _____

Address: _____

6. I hereby certify that the above named nonresident taxpayer is currently registered with (check the appropriate box):

- ☐ The South Carolina Secretary of State or
☐ The South Carolina Department of Revenue

Date of Registration: _____

7. I understand that by this registration, the above named nonresident taxpayer has agreed to be subject to the jurisdiction of the South Carolina Department of Revenue and the courts of South Carolina to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties.

8. I understand the South Carolina Department of Revenue may revoke the withholding exemption granted under Code Sections 12-8-540 (rentals), 12-8-550 (temporarily doing business or professional services in South Carolina), and 12-8-570 (distributions to nonresident beneficiary by trusts or estates) at any time it determines that the above named nonresident taxpayer is not cooperating with the Department in the determination of its correct South Carolina tax liability.

The undersigned understands that any false statement contained herein could be punished by fine, imprisonment or both.

Recognizing that I am subject to the criminal penalties under Code Section 12-54-44 (B) (6) (a) (i), I declare that I have examined this affidavit and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Nonresident Taxpayer (Owner, Partner or Corporate Officer, when relevant) (Seal) _____ Date

If Corporate officer state title: _____

(Name - Please Print)

INCOME TAX CREDIT

References: SC §12-6-3350 – Income Tax Credit for State Contractors Having
Subcontracts with MINORITY Firms

Taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is capped at \$50,000 per year or the total tax liability; whichever is lesser. The taxpayer is eligible to claim the credit for 10 consecutive taxable years beginning with the taxable year in which the credit is first claimed. There is no carry forward of unused credits.

The credit may be claimed on Form TC-2, “Minority Business Credit.” A copy of the subcontractor’s certificate from the Governor’s Office of Small and Minority Business (OSMBA) is to be attached to the contractor’s income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor.

Questions regarding the tax credit and how to file are to be referred to:

SC Department of Revenue

Research and Review

Phone: (803) 898-5786

FAX: (803) 898-5888

Reference: SC §11-35-5010-Definition for Minority Subcontractor
SC §11-35-5230 (B)–Regulations for Negotiating with State Minority Firms

The subcontractor must be certified as to the criteria of a “Minority Firm” by the Governor’s Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. Questions regarding subcontractor certification are to be referred to:

Governor’s Office of Small and
Minority Business Assistance

Phone: (803) 734-0657

FAX: (803) 734-2498

OFFEROR'S CHECKLIST (JUN 2007)

OFFEROR'S CHECKLIST -- AVOID COMMON BID/PROPOSAL MISTAKES

Review this checklist prior to submitting your bid/proposal.

If you fail to follow this checklist, you risk having your bid/proposal rejected.

- Do not include any of your standard contract forms!
- Unless expressly required, do not include any additional boilerplate contract clauses.
- Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
- Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released!**
- Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
- Make sure your Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested!
- If you have concerns about the solicitation, do not raise those concerns in your response! **After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.

DHEC Confidentiality Agreement

I understand that the South Carolina Department of Health and Environmental Control (DHEC) has a legal and ethical responsibility to maintain confidentiality of information as to personal facts and circumstances of DHEC employees, clients, or other citizens given or made available to DHEC in administration of the agency's programs and services.

DHEC's Confidentiality Policy states that Information about personal facts and circumstances of DHEC employees, clients and other citizens will be kept confidential and will not be disclosed without the individual's written authorization, except as required by law or as required to perform agency responsibilities. Protected Health Information that identifies an individual generally cannot be released unless properly authorized by the client or his/her legal representative, or pursuant to a specific exception under the Health Insurance Portability and Accountability Act (45 CFR Parts 160 and 164). The Family Privacy Protection Act and other state and federal laws may place additional limitations on disclosure of personal information.

Information that is made available to the public under the Freedom of Information Act must be disclosed in accordance with State law. However, the Freedom of Information Act protects information of a personal nature such that public disclosure would constitute an unreasonable invasion of privacy. The types of information that generally must be kept confidential include, but are not limited to: protected personal information of job applicants, DHEC employees, or members of the public, such as names, social security numbers, addresses, telephone numbers, financial status and information, account or identification numbers issued by government agencies or private financial institutions, confidential business information, vital records information, social security numbers, and health information that identifies individuals.

I understand that during the course of my employment, volunteer services, or contract performance with DHEC, I may see or hear confidential information and/or protected health information.

By signing this agreement, I understand and agree that I will not disclose confidential information or protected health information unless the disclosure complies with DHEC policies and is required to perform my responsibilities. I will not access or view any information other than what is required to do my job. If I have any questions about whether I need access to certain information, or whether certain information should be disclosed, I will immediately ask my supervisor for clarification. I will immediately report any unauthorized disclosure of protected health information or other confidential information as required by DHEC Policy, or as required by terms in any contract or agreement with DHEC to which I am a party.

I will not discuss any confidential information or protected health information obtained in the course of my relationship with DHEC with any person or in any location outside of my area of responsibility in DHEC, except as otherwise required or permitted by law. I will not make any unauthorized copy or disclosure of this information, or remove or transfer this information to any unauthorized location.

I agree that my obligations under this Agreement regarding confidential and protected health information will continue after termination of my employment/volunteer assignment/contract affiliation with DHEC.

I understand that violation of this Agreement may result in termination of my volunteer, contractual and/or work relationship with DHEC and may be grounds for disciplinary action, fines, penalties, imprisonment or civil suit to be brought against me.

I have read the above Agreement and agree to comply with all its terms.

Signature: _____ Date: _____

Witness: _____ Date: _____

Work Location: _____

BUSINESS ASSOCIATE AGREEMENT

BETWEEN

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AND

I Purpose:

The South Carolina Department of Health and Environmental Control (hereafter referred to as "Covered Entity") and _____ (hereafter referred to as "Business Associate") desire to enter into this Business Associate Agreement (hereafter, "BA Agreement" or "the Agreement") for the purpose of protecting the privacy and security of clients' health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Standards for Privacy of Individually Identifiable Health Information, 45 CFR Part 160 and Part 164, Subparts A and E (hereafter referred to as "the Privacy Rule"), and the HIPAA Security Standards for the Protection of Electronic Protected Health Information, 45 CFR Part 160 and Part 164, Subparts A and C (hereafter referred to as "the Security Standards.")

II. Definitions (Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule or the Security Standards.)

- a. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- b. Protected Health Information. "Protected Health Information" (hereafter referred to as PHI) shall have the same definition contained in 45 CFR § 160.103. For purposes of this Agreement, PHI is limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.
- c. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR § 164.103.
- d. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- e. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or his designee.

III. Business Associate Agrees as follows:

- a. To Adhere to the Covered Entity's policies and procedures with regard to the use and disclosure of PHI created or received by the Business Associate from or on behalf of the Covered Entity, for so long as this BA Agreement is in effect.
- b. To Comply with the Confidentiality provision contained in Purchase Order No. _____ and any Confidentiality Agreement signed by the Business Associate pursuant to that Contract for so long as this BA Agreement remains in effect.
- c. Not to use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- d. To use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. The Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any ePHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Standards.

- e. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, pursuant to 45 CFR § 164.530(f)..
- f. To report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which Business Associate becomes aware.
- g. To ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information and that any agent or subcontractor to whom it provides ePHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, agrees to implement reasonable and appropriate safeguards to protect such ePHI.
- h. To provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements of 45 CFR § 164.524 if the Business Associate has PHI in a designated record set.
- i. To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity if the business associate has PHI in a designated record set. Business Associate shall not amend PHI received from the Covered Entity or created and/or provided to the Business Associate on behalf of the Covered Entity unless the amendment is directed by or consented to by the Covered Entity. The Business Associate shall provide a copy of the amended PHI to the Covered Entity.
- j. To make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- k. To document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- l. To provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section III.k of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- m. If requested by the Covered Entity, to provide a copy of the Covered Entity's Notice of Privacy Practices to the client at the time of first contact, and maintain documentation of the client's receipt of the Notice.
- n. To contact the Covered Entity's Privacy Officer at (803) 898-3318 at any time clarification or guidance is needed regarding compliance with the terms of this Agreement.

IV. Covered Entity Agrees as follows:

- a. To provide the Business Associate with a copy of its policies and procedures implementing the Privacy Rule, including the Notice of Privacy Practices.
- b. To notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. To notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- d. To notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- e. Not to request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

V. Permitted Uses and Disclosures by Business Associate

a. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Purchase Order No. _____, or as otherwise provided by law, provided that such use or disclosure would not violate the Privacy Rule or the Security Standards if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity, and provided that such disclosures are documented pursuant to Sections III (k) and (l) of this Agreement.

b. Specific Use and Disclosure Provisions

1. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.

Business Associate will notify the Covered Entity of any breach of confidentiality or security by a person to whom the Business Associate has disclosed PHI pursuant to this Section, and will mitigate and/or assist the person and the Covered Entity in mitigating any harmful effects resulting from the breach of information.

3. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
4. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

VI. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the date of the Purchase Order, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and Contract # HV-09-070 if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 2. Immediately terminate this Agreement and Contract # HV-09-070 if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. If the return or destruction of PHI held by the Business Associate is not permissible

pursuant to South Carolina law, the Business Associate will extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. Indemnification (the following does not apply to other South Carolina agencies or political subdivisions)
Business Associate agrees to indemnify and hold harmless Covered Entity from any claims, demand, suit, loss, liability, or administrative penalties that the Covered Entity may sustain as a result of the Business Associate's breach of this Agreement, including any breach of confidentiality by a person to whom the Business Associate has disclosed information pursuant to this Agreement; provided, however, that the Business Associate shall not hold the Covered Entity harmless from any claims, demands or causes of action arising or resulting directly or indirectly from negligence of the Covered Entity, its officers, agents, representatives or employees, or any person or entity not subject to the Business Associate's supervision or control. This indemnification shall include reasonable expenses including attorney's fees incurred by defending such claims and damages incurred by reason of the Business Associate's failure to comply with applicable laws and regulations or for damages caused by the Business Associate, its employees and/or agents, including subcontractors. As a condition precedent to asserting a right of indemnity, the Covered Entity shall provide timely written notice to the Business Associate of the assertion of the claim to which the right of indemnification is claimed to exist.

VIII. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Standards means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Standards and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section VI.c of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Standards.

AS TO DHEC

BY: _____
Michelle Robinson, CPPB
Procurement Manager I

DATE: _____

AS TO THE CONTRACTING PARTY

BY: _____
(NAME)
Its: _____
(TITLE)

DATE: _____

MAILING ADDRESS: _____
